

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1134 of 2002****APPELLANT:**
(In Jail)Guruwaru, S/o Dokari Manjhi,
aged about 40 years, R/o
Bhalupakhan, P.S.
Dharamjaigarh, District:
Raigarh (CG).

- Versus -

RESPONDENT:

State of Chhattisgarh.

JUDGMENT FOR CONSIDERATION**HON'BLE MR. JUSTICE DHIRENDRA MISHRA**Sd/-
L.C. Bhadoo
JudgeSd/-
DHIRENDRA MISHRA
Judge**POST FOR PRONOUNCEMENT OF JUDGMENT ON 09 JULY, 2007**Sd/-
L.C. Bhadoo
Judge



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(Criminal Appeal under Section 374 (2) of the Criminal Procedure Code)

Present:

Miss Sangeeta Mishra, Advocate:

For the appellant.

Mr. Ashish Shukla, Additional

Public Prosecutor:

For the State/respondent.

CORAM: - HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 09 July, 2007)

The following judgment of the Court was delivered by L.C. Bhadoo, J. -

1. This appeal is directed against the judgment of conviction and order of sentence dated 29-12-2001 passed by the 3rd Additional Sessions Judge, Fact Track Court, Raigarh in S.T. No.138/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing murder of his wife namely, Manmoti, sentenced him to undergo imprisonment for life.
2. The case of the prosecution, in brief, is that PW-1 Jhanak Ram lodged a report in the Police Station Dharamjaigarh on 8-5-2000 to the effect that today morning he along with his wife went to the market of Paththalgaon.

When they returned at about 8.30 a.m. from the market, Hariram and Chamar Singh informed him that Guruwaru has committed the murder of his sister. Immediately, he went to his house and saw that his sister Manmoti was lying dead. There were injuries on the left parietal region. Blood was oozing out of the injuries. The villagers caught the accused and kept him in the school. Merg intimation Ex.-P/2 was given by Jhanak Ram, based on that first information report Ex.-P/1 for commission of offence under Section 302 of the IPC was registered by Sub Inspector Sanjay Tiwari (PW-8), who immediately left for scene of occurrence and prepared inquest Ex.-P/4 on the body of the deceased and sent the body for postmortem examination to the Primary Health Centre, Dharamjaigarh where Dr. Smt. Bindu Singhal (PW-5) conducted postmortem on the body of the deceased, prepared postmortem report Ex.-P/9 and opined that cause of death was due to coma as a result of head injury. Axe, weapon of offence, was seized from the accused under Ex.-P/7, same was sent to the Assistant Surgeon for his opinion under Ex.-P/10-A and he opined that injuries found on the body of the deceased can be caused by axe in question.

3. After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Dharamjaigarh, who in turn committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge received the case on transfer for trial.
4. The prosecution in order to establish the charge against the accused examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and he has not committed the crime.

5. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.
6. We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.
7. Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Even otherwise, from the ocular evidence of PW-4 Phoolmati, a child witness, who has stated that the accused attacked the deceased, her aunt, with axe and from the medical evidence of Dr. Smt. Bindu Singhal, who conducted postmortem on the body of the deceased and has stated that there was injury on the head towards back side of the left ear in the size of 9 cm x 2.5 cm, bone deep, there was contusion, clotted blood was present and bone beneath injury was fractured, brain was visible from the injury; on opening the body, it was found that brain matter was liquefied, lungs were pale, both chambers of the heart were empty, cause of death was coma as a result of head injury, death was homicidal in nature, it is established that death of the deceased was homicidal in nature.
8. As far as involvement of the accused/appellant in the crime in question is concerned, PW-4 Phoolmati, 7 years girl and daughter of PW-1 Jhanak Ram, has stated that at the relevant time she was at residence. She saw that the accused attacked the deceased with axe, as a result of which the deceased sustained injuries and died. Seeing that she raised cries and disclosed to her parents. Learned counsel for the accused/appellant argued that in para-3 of cross-examination she has stated that on that day she came along with Kamal Sai and her father. They said that you

should tell that you saw the accused attacking the deceased. Therefore, being child witness, she was tutored witness and reliance cannot be placed on her evidence.

9. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused evidence of this witness. This witness has categorically stated that on the fateful day she was at residence and in her presence only the accused attacked the deceased with axe. In cross-examination, she has categorically stated that it is incorrect to say that she was not at residence. She saw the accused attacking the deceased. It is incorrect to say that she did not see the accused attacking the deceased. Therefore, in view of the above evidence, it is established that she was present and she herself saw the accused attacking the deceased. As far as her evidence that she came along with Kamal Sai and her father for giving evidence and they said that you tell that you saw the accused attacking the deceased is concerned, that does not mean that she was tutored to give false evidence. When she has categorically stated that she saw the accused attacking the deceased, even if her father and Kamal Sai asked her to disclose whatever was seen by her, that does affect the credibility of the evidence of this witness.

10. Learned counsel for the accused/appellant further argued that in the same para this witness has stated that she had not seen that at which place the accused attacked. Being 7 years old child it is not necessary for her to narrate all minute details of crime that on which part of the body the accused attacked. This witness was present in the house and she simply saw the accused attacking the deceased, that has been said by her. There is no reason to disbelieve the evidence of this witness.

Evidence of this witness inspire confidence of the Court that she had witnessed the accused attacking the deceased.

11. PW-2 Hariram and PW-3 Chamar Singh have stated that on the fateful day they returned from the river side, they saw that the accused was coming from the side of Jhanak Ram's house carrying axe in his hand stained with blood. They enquired from the accused 'what you have done', on which he replied that 'go and see at the residence of Jhanak Ram'. They caught the accused and kept him in the school. They snatched axe, closed him in a school room, thereafter they went to the house of Jhanak Ram and saw that dead body of the wife of the accused was lying in the house. There was injury on the head. Blood was oozing out of the injury. On further enquiry, Guruwaru said that Manmoti has been murdered.

12. Learned counsel for the appellant argued that the accused has not made extra judicial confession before these witnesses in clear cut words that he in fact, committed murder of the deceased.

13. But, from the evidence of these witnesses, it has come on record that they saw the accused coming from the side of the house of Jhanak Ram, dead body of the deceased was lying, the accused was carrying axe stained with blood. On their enquiry, he asked them to go to the house of Jhanak Ram and see what has happened, thereafter, they went there and saw that the dead body of the deceased was lying. Therefore, the accused in clear cut words disclosed to them that what has been done by him. He was carrying blood stained axe. He was coming from the house of Jhanak Ram and he disclosed to them that they should go and see the house of Jhanak Ram what he has done. They immediately went and saw that the dead body of the deceased was lying in the house.

of Jhanak Ram. This conduct even if is not treated as extra judicial confession, even then conduct of the accused and circumstantial evidence is admissible in evidence against the accused.

14. Axe in question was seized by these persons and thereafter that was seized by the Investigating Officer under Ex.-P/7, same was sent to the Forensic Science Laboratory from where report Ex.-P/15 was received. In that report, it has been mentioned that axe was found stained with blood. Therefore, we are of the considered opinion that from the evidence of PW-4 Phoolmati and circumstantial evidence adduced by PW-2 Hariram and PW-3 Chamar Singh, it is established that the accused was the author of the crime in question.

15. In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal fails, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Barve

Sd/-
DHIRENDRA MISHRA
Judge